

Statement of Donald A. Cole

Before the

Subcommittee on Coast Guard and Maritime Transportation

of the

Committee on Transportation and Infrastructure

U.S. House of Representatives

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2:00 PM
Thursday, June 19, 2008

Mr. Chairman and members of the Subcommittee, I am pleased to be here at your request to testify regarding the Federal Maritime Commission (FMC) Management and Regulation of International Shipping.

BACKGROUND

Chairman Blust came to the Federal Maritime Commission in 2002 knowing that the maritime industry had changed and was continuing to change. The FMC, however, had not changed and was continuing with an enforcement mindset rather than one of compliance and working in partnership with the industry it regulated and served. Chairman Blust wanted to make the FMC into a high performing organization working with its clients, stakeholders, and its constituents. He knew that the understanding and skills to make this change did not exist in the FMC and sought the services of a consultant. FMC contacted the Federal Executive Institute, a government agency and part of the Office of Personnel Management, for assistance. Three consultants were referred and interviewed by a panel including the Chairman, members of the Senior Executive Service (SES), and his counsel. The Chairman selected me, Donald A Cole to support the change effort and requested help with strategic planning as a first step.

During the selecting interview, I discussed the process of organizational change, provided a copy of my professional fee schedule and travel policy, discussed how I normally work with an organization (i.e., on site charged at a daily rate and off site work charged at an hourly rate, frequency of visits, telephone and email, etc.) and the roles and responsibilities of political and civilian leadership. I follow this practice with all of my clients to ensure clarity prior to starting work. The first step would be to perform an organizational analysis. I also stated that there needed to be chemistry and energy between the consultant and the client organization for a successful long-term relationship. This analysis consisted of conducting interviews up, down, and across the organization to determine several basic factors concerning the “as is” situation with respect to leadership, trust, vision, values, conflict, communication, operational systems, and to gauge the level of morale of employees, among other factors. The parties agreed to start with the interviews. We agreed that I would only report to the Chairman. It is my practice to only take direction from the top person because he/she sets the tone for the entire organization.

The interagency agreement was issued and work started in December 2003. The analysis interviews were conducted over three days and a report of the findings/issues was immediately provided to the Chairman, the SES, and his counsel.

FINDINGS AND REPORT OUT TO FMC

The following were provided to the Chairman, his counsel, and the SES in December 2003:

1. Lack of Trust—at all levels in the organization but especially in the leadership: women and minorities feel disenfranchised; conflict abounds between people, managers, SES, and even the bureaus.

2. No leadership team exists, managers do not know how to give or receive feedback to employees or customers, people do not know where they fit in. There is no vision.

3. Communication—people are starved for information; no staff meetings are being held, there is little interaction with industry, there are no operational values exhibited.

4. The agency appears to be adverse to change—people are fearful to suggest improvements; empowerment is not in their vocabulary.

5. Relationships with customers, clients, stakeholders, and the Hill are poor.

6. The organization operates in a command and control manner. The Executive Director sits atop an unbalanced structure and has 90% of the organization reporting to him. The Bureau of Enforcement operates with a hammer mindset rather than how the agency can work in partnership with industry and individuals. The organizational structure supports this top-down power with only three direct reports to the Chairman—the Executive Director, the General Counsel, and the Secretary. There is little support, training, or development for the workers and no socialization.

7. The budget is controlled by a few. No bureau has its own budget allowance, thus no budget responsibility or accountability exists.

8. IT-Automation of processes both inside the agency and the industry you serve are outdated and no plan exists to improve. Computer security is questionable at best and no disaster recovery plan exists.

9. There is little interaction between the Commissioners and the staff. They are a rich resource and should be used/included in the products/services you deliver.

10. There is no concept of “Stewardship of the Whole”—that all the leaders/managers are responsible for managing efficiently and effectively the resources of the agency. It is not OK for one part of the agency to do just fine at the expense of another. The leadership/management team will succeed together or fail together.

There were eighteen findings in all and some are combined here to give a sense of what I found. In my opinion, a functional review should be accomplished as well - what to continue, what to start and what to stop doing. I recommend we review all and then combine and categorize the issues, these if you intend to work them.

The good news: FMC has some high-quality people. FMC must support and develop them or they will leave. The 2 top reasons why people leave jobs: a bad boss and lack of support. People want to be communicated with and asked what they can contribute to improve operations. They want to know what is going on routinely and when their leaders travel/meet industry/speak, etc. If FMC can create a safe environment where change is wanted/expected and dialogue occurs (and management LISTENS), employees will respond. They must also be told that failure of one of their ideas does not mean they will suffer any penalty. It is safe to experiment. Bottom line—FMC has the opportunity to make change and has this supporting data on what people have disclosed.

Another note was the high number of SESs (seven) for such a small agency, 130 personnel, and budget of \$21M. In other organizations, a GS-13 or -14 would have that span of control.

I stated that the issues found during the organizational analysis were so significant that I felt those issues had to be processed/addressed prior to conducting strategic planning. Further, if the FMC wanted to directly proceed with strategic planning, they should hire another consultant because I would not proceed, as I believed it to be a waste of precious resources. The Chairman and his leadership team agreed that the issues should be addressed first.

WORK ON THE ORGANIZATIONAL ISSUES/FINDINGS

During the next visit, the issues and findings were reviewed and discussed individually at greater depth to allow an understanding of the impact on the performance of the organization. The issues were grouped and I provided a process for working the issues. Later teams, with membership from across the organization, were established to work the five major categories/topics. Work then proceeded to develop a plan of action and milestones for each of the categories.

Since communication was a major issue, the Chairman and I went to each office to meet with all employees to explain the process that was being launched and to listen to their issues and concerns. Periodic updates continued to be provided so all would know what was going on. This practice of continued communication and visits to employee offices and spaces continued for the duration.

Later the organizational structure was addressed. Under the previous Chairman, an Executive Director was in place with four SESs reporting to him. The Chairman had three direct reports: the Executive Director, the General Counsel, and the Secretary. Almost all of the power/control and resources were under the Executive Director who ruled with an iron hand. The SESs were asked to provide at least two options for a realignment that made functional and operational sense. After a considerable period of time they came back with two recommendations which were discussed at length before a realignment was announced and implemented.

To address the issues of feedback on leadership and management of the organization, I recommended doing Benchmarks, a 360 degree feedback instrument, starting with the leadership team. This 360 degree instrument looks at 16 characteristics of an individual across the areas of Meeting Job Challenges, Leading People, and Respecting Self and Others. It also looks at what is most important for success in the organization and problems that can stall a career. Once this was accomplished, the next level of leadership was also included. I provided individual feedback sessions of approximately two hours for each of the nearly thirty individuals. I also conducted sessions for the individual groups and the combined group so that they could understand the implications to the organization. This joint session lasted one-half day. For some in this group, this was a very painful process because they were not self aware and were shocked to receive this feedback. For most, it was the first time in their careers to receive feedback. Some wanted to shoot the messenger—and probably would now also.

During my monthly visits, I scheduled one or two open appointments, time permitting, where staff could meet with me on any topic for a one on one. As a result, I met with a significant number of the staff on various issues both personal and professional. The range of topics included a wide variety of topics from 360 feedback interpretation to secretarial support and career development, not just the issues pursuant to my contract. I reached out and touched many while there.

I tried to interview the Commissioners to obtain their sense of what was going on and to ask for their issues, to determine the level of communication amongst themselves and the agency. Each Commissioner also has a counsel. Interviews were completed with all Commissioners except Commissioner Anderson. After twenty minutes into the interview, he got up and said he had to catch a plane to Florida. We agreed to finish the interview later. I contacted his counsel repeated times, sent emails, left voice messages, and none were returned—ever. Over the three years, I was typically on site two days per month. I saw Commissioner Anderson perhaps three times. I went by his office on most visits and he was never there. As a result of those interviews, I suggested monthly meetings between the Chairman and the Commissioners, more interface between the Commissioners and the staff, and a strategy of how to better use the Commissioners inside and outside the agency since they were obviously a valuable resource that was severely under-utilized. The Chairman proceeded to have meetings and coffees as needed during which time he briefed the Commissioners on the organizational change work that was going on, among other things. The Chairman had two issues here: one Commissioner who was never there and one who was the previous chairman. Both proved problematic.

I also designed a two-day offsite to review the issues and establish the five working groups and the leadership team. The offsite was conducted in another government facility two blocks away. The Commissioners were invited to attend a working lunch on the second day and were briefed on the status of all ongoing work and were asked for their questions/input/views on future issues that could affect the agency. All Commissioners attended except Commissioner Anderson. A comprehensive report of the offsite was also issued.

Teambuilding and trust building was also started for the leadership team because the General Counsel was a recent internal selection by Chairman Blust and the reorganization would depose the Executive Director, who had been in power for eight years with the previous Chairman and one year with Blust. The Chairman also utilized internal attorneys for his counsel and did not bring on any political appointees. He was very conscientious about the budget and using internal people.

The Bureau of Enforcement did not agree with nor want to change its mindset from enforcement to compliance. The bureau did not even want to consider using alternative dispute resolution internally or externally. They were not concerned about working with industry in partnership to solve issues with existing law and regulation. The bureau also did not want to give up having the field offices report to them. This battle lasted over two years. When I asked if there was a backlog of cases, I was told “Sure, and it is normal.” So I pressed and asked how big it was. Two months later it was finally disclosed and it

was huge. There was no sense of urgency to bring anything to closure. Some cases were over ten years old and no one in BOE cared. The staff attorneys did the work and then the head of the bureau took the trip and negotiated the final deal. He really got angry when I asked how he expected the attorney who did all the work to get the experience of getting to closure.

I do want to make sure it is understood that there were some really good people at FMC who wanted change, empowerment, and to become a high performing organization. They wanted good leadership and support so they could become successful. The employees were glad for new political leadership and wanted new civilian leadership as well. People in the organization had not been exposed to leadership training and development and therefore did not have the skills to do this kind of change work—which is difficult and demands high-quality leadership and support.

I also recommended establishing a working group consisting of all the deputies so they could better understand what their bosses were doing, how to manage up, how to communicate, and what happens when you do not—people make up stuff to fill the void. They would be in charge if for some reason their boss left and they needed to be ready to take over without missing a beat.

I took the agency through a visioning exercise which produced a vision statement which was agreed upon by all members of the agency. Industry was also contacted for their input. We also worked on values, which proved to be extremely difficult for them. Remember, there was low trust. It took approximately seven months to put together a values statement that was eventually shelved. In addition to leadership and vision, values are a fundamental building block for how people are treated. It is the measure of how we hold each other accountable for behavior. When values are violated, trust is gone. There is not an automatic way to get trust. Trust is based on watching people and their actions and words—doing what you say you are going to do—relationships. It is accountability. So, an event that occurred ten or twenty years ago and was not processed and resolved causes a person to lose trust in another. It has not been rebuilt.

A number of cases like this existed and currently exists in FMC. Some examples where I worked included mediations/interventions between: supervisors and subordinates, the Alternative Dispute Resolution office and the Bureau of Enforcement, a Bureau Director and his four managers, and between two SESs. One in particular that stands out was between Commissioner Creel and the General Counsel who has now left the agency. This conflict reached such a level of concern for me because of the damage it was doing to the organization that I went to Chairman Blust and requested permission to do an intervention or mediation. He agreed with me and I took that on. I met with each separately for a couple of hours to understand the history and the issues. I then conducted a joint session to address the baggage and issues they had built up over the years. They agreed to bury the past and to work civilly together for the interest of their own careers and for their leadership responsibilities to the organization which had been observing their behavior. This agreement lasted until Chairman Blust left and then it spiraled out of control. I think many were waiting for his departure, and mine too, so that they could

return to the old ways. Conflict erupted between at least two Commissioners and their counsels with the General Counsel since she was a Blust appointee and supported change. The General Counsel tried to work with them at my suggestion, but it got nowhere. Open hostility existed.

Information Technology (IT) was antiquated and did not serve the agency or its clients. Backlog existed in processing applications and it took new equipment and software to eliminate this problem, over three years.

To recap my involvement over three years at FMC, I was typically on site two days per month unless something more was required. I also provided support from off site in the form of consulting, coaching, designing, doing reading and research, creating agendas via telephone/email, and that typically took somewhere between one-half to one day per month. Again it depended on what was going on and what was requested by the Chairman and the SESs. I was very generous in giving my time to FMC. I did not charge them for all that I did because they were a small agency with a small budget. I was happy to see the progress they were making, and I was committed to their success because my success depended, in part, on theirs.

I began working at FMC under an interagency agreement with FEI that was terminated by FMC in 2004 because I was not being paid in a timely manner. FMC decided to utilize a sole source procurement in order to retain my services and to save the 32 percent surcharge OPM placed on top of my costs.

CHAIRMAN BLUST'S DEPARTURE

The Chairman called me in late March or early April 2006 and told me he would not be renominated for a second term. We immediately started transition planning and he started a job search process. We also discussed when to disclose to the Commissioners/SESs and to the agency. He asked if I would stay through the transition to the new Chairman's arrival and I said I would. The Chairman anticipated his search would take at least 90 days.

As we started work on the transition and the news was released, a couple of things happened that led me to believe that privileged communication had been obtained. So I asked the Chairman if his communication systems were secure and he said he was not sure. As a result, we arranged alternative communication methods from June until his departure at the end of November 2006.

Chairman Blust left FMC on November 30, 2006. I was scheduled for my monthly visit during his last week in office. He called the week before and asked if I could reschedule to the following week. I was able to accommodate the change and we agreed that I would be at FMC on December 5 and 6 to meet with the Commissioners and continue with the change process. On Monday, December 4, I was in Washington, DC and received a call at 6:00 PM, from the Acting Director of Administration; I was told that my visit has been suspended by a vote of the Commissioners because of questions raised by an IG audit of

my contract. He said he would get back to me. What he failed to tell me was that he decided it was a problem based on what the IG told him, and he had the Commissioners vote. What a huge coincidence that the timing of this takes place the day after the Chairman and the former Executive Director depart. The Chairman was not aware of any kind of audit being done before he left. I wonder what the basis was for the extreme action taken by the DOA based on the information furnished by the IG at such an early stage in the audit. My contract was, in fact, over.

There is a provision in my fee schedule that says I will try to accommodate a change in an agency schedule if given three weeks advance notice. Cancellation or rescheduling will be done without penalty if I can. If not, the agency is liable for payment. In this case, the visit was canceled with one day's notice. I charged FMC for this cancellation in accordance with my fee schedule. I think the IG told the Director of Administration not to pay it. In any case, my final invoice was just like all the others that had been submitted and paid by FMC's contracting office. FMC has refused to pay my final invoice. It is over a year and a half old. The finance office personnel who issue the rejections said they are not allowed to talk to me and that Mr. Peter King, the DOA, is the only person in the agency who can take any approval action. So I went to Mr. King and the General Counsel on multiple occasions to see if we could talk or meet. Mr. King refused to respond to calls and multiple emails. When I asked to meet directly with the Commissioners, he shot back saying he was the sole authority to speak for the Commission and the Commissioners would not meet with me. Mr. King refused to meet with me and the General Counsel and the Contracting Officer. The Contracting Officer was gagged by Mr. King and told he could not communicate with me in any way. Is this stewardship of our tax dollars and serving the public interest?

The power has shifted to the four Commissioners and the Director of Administration. A pertinent point is that the DOA was the former Deputy in the Bureau of Enforcement and held the same mindset as his boss—command and control, power and not much concern for the feelings of people or industry. He rejected most of my recommendations while in BOE and his current actions as the DOA smack of retaliation. The unraveling of three years of hard work begins with Blust's departure. After the General Counsel left, the DOA, Mr. King, became the Acting General Counsel. The Commissioners met in two's, deliberately I might add, to avoid having an open meeting. The SES leadership splits as well. The Secretary and General Counsel left, and the SES corps was split 4 to 2. All abdicate their leadership responsibility and then all employees suffered.

There was a second SES Candidate Development Program. FMC spends approximately \$100K or so for this program to develop six candidates. Four have left the agency in the last six months. We might ask, why? We should look at all who have left the agency since November 2006 and ask why. Is it not obvious? Would you want to work there?

THE INSPECTOR GENERAL AUDIT

In May 2007, the IG issued his audit of my contract. It must have been the only contract he was auditing. If the audit started in November 2006, it took six months to conduct one

audit of a small contract (\$160,000 over three years). No other audits were produced or posted on the FMC website during this time. FMC had already paid a private firm to audit this same contract. The audit by the private firm, Clifton-Gunderson, found nothing wrong. What was the cost of the two audits? The cost of the IG and his staff for seven months is roughly \$160,000. Why did the IG expend resources to audit a contract which had already been audited with no findings?

The audit did point out internal problems in FMC's contracting process. The contract did not require administrative reporting and travel receipts from me. Although the type of contract was never stated, it was in essence a Firm Fixed-Price contract. I acted in good faith under the terms of the contract. There was never any question about the work I performed or the dates I was on site. During the audit, the IG decided the contract should have been a Time and Materials contract and sought support of his position from another agency, GSA, to validate his opinion. I furnished the documents requested by the contracting Officer via the IG request only to receive not one, but two, subpoenas for documents that I did not have because the contract did not require any record keeping. When my attorney contacted the IG in response to the subpoena and asked what records to produce, the IG said to provide only what I could immediately lay my hands on. The IG stated there was no need to get telephone, credit card and other records. In hindsight, this was a setup, in my opinion, as he deliberately used the missing data to raise his recovery number as high as possible. Inside the IG community, the individual value of an IG is measured by the highest number of dollars they can recover.

The IG compromised his independence on several occasions and abused his position. The IG went to other agencies where I had worked and requested investigations of my contracts. Nothing irregular was found by any other agency. Any activity by an IG creates fear. As a direct result of the IG's contact with other agencies, a chilling effect occurred. At least one contract was not renewed. Other clients contacted me concerned about the IG's call.

The IG compromised both his and management's independence on numerous occasions. First, he directed management not to pay my last invoice. This instruction is clearly beyond his authority. Second, he was directly involved in the cancellation of my contract, which occurred at the very beginning of his audit and was not appropriate. Third, after meeting with Congressional staff, he reported his discussions back to the Commissioners. These examples clearly demonstrate that the IG has compromised his independence and interfered with the agency's audit follow-up responsibility.

I have provided support and responded to many, many calls, emails and requests for support from FMC staff since December 4, 2006. I did so freely and at no charge. The people up and down the organization needed help. Where else could they go? They trusted and respected me and what I had to offer.

After the April 15, 2008 hearing, I called my attorney to discuss the possibility of another settlement offer even though FMC had rejected all others. My attorney said that Mr. King had personalized my case and that it would be a waste of my time. He reminded me that

Mr. King had told him that he wanted to ensure that I suffered all \$56,000.00 worth of pain and money. So I have lost my sense of humor over this. This has been the worst experience of my forty years of serving the government I love. It has taken—correction—it has wasted so much of my time, energy and money. FMC, on the other hand, has unlimited resources with which to continue this saga. They are not concerned about the amount of taxpayer funds they expend and no one knows how much they have spent on my case. I am certain it is in the range of \$250,000. I hope the Subcommittee will review how FMC has spent its funding in the past, but more importantly in the future. Their budget request for 2009 is a good starting place. The public wants stewardship, not vengeful spending.

I have had contact with people from the agency and the press since the April 15, 2008 hearing. The reporter stated that no one from inside or those who had left the agency would speak to him and he wanted to know why. I told the reporter that I thought an environment of fear and intimidation existed, but I could not be certain since I had not been in the agency in eighteen months. He wanted a story and I told him he had one—why would the public servants at FMC be afraid to speak up?

CLOSING

So where do we go from here? We, the Subcommittee and I, are faced with the same problem. We each have to deal with the now remaining three commissioners and the Director of Administration/Acting General Counsel. We both want responsible leadership to serve the maritime industry and the public interest while supporting and developing the 131 employees who do the work. And they want \$25 million and to be left alone with no oversight and accountability for those resources.

Mr. Chairman, this concludes my statement and I would be pleased to answer your questions.